

# IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

---

## COMPLETE TITLE OF CASE

NADINE McCOMB,

Appellant,

v.

GREGORY NORFUS and DAVID CHEESE,

Respondents.

---

**DOCKET NUMBER** WD77761

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** September 6, 2016

---

## APPEAL FROM

The Circuit Court of Cole County, Missouri  
The Honorable Jon E. Beetem, Judge

---

## JUDGES

Division Two: Gabbert, P.J., Mitchell, J., and Ellis, Sr. J.

CONCURRING.

---

## ATTORNEYS

David M. Zevan, Kevin J. Davidson, Rachel L. Roman, and Tommie A. Harsley III  
St. Louis, MO

Attorneys for Appellants,

Ronald C. Willenbrock and Shawna M. Bligh  
St. Louis, MO

Attorneys for Respondents.

---



## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

NADINE McCOMB,

Appellant,

v.

GREGORY NORFUS and DAVID  
CHEESE,

Respondents.

OPINION FILED:  
September 6, 2016

WD77761

Cole County

Before Division Two Judges:

Anthony Rex Gabbert, Presiding Judge, Karen King  
Mitchell, Judge, and Joseph M. Ellis, Senior Judge

Nadine McComb (Wife) appeals the grant of summary judgment in favor of Respondents, Gregory Norfus and David Cheese, in her action for wrongful death of her husband, Edward McComb (Husband). Husband died as the result of a single-car accident after his vehicle slid off an icy road while he was driving as part of his job duties as a courier for St. Mary's Health Center. Respondents were Husband's supervisors at the time of his death. Wife argues that summary judgment was improper because there exists a genuine dispute of material fact as to whether Respondents were simply carrying out their employer's non-delegable duty to maintain a safe work environment, or whether they breached a personal duty of care owed to Husband, when they directed him to drive his route in bad weather conditions.

**REVERSED AND REMANDED.**

**Division Two holds:**

1. To assign responsibility for a workplace injury at common law, the necessary starting point is to first determine whether the injury was caused by a breach of the employer's non-delegable duties.
2. The threshold question of whether a workplace injury is attributable to a breach of the employer's non-delegable duties is a question of fact.

3. If, after considering all relevant facts and circumstances, an employee's workplace injury can be attributed to the employer's breach of a non-delegable duty, then a negligent co-employee owes no duty in negligence to the injured employee as a matter of law.
4. Because the manner in which instrumentalities are used may make a place safe or unsafe as a place of work, the duty to see that instrumentalities are safely used may become the most important element in the safety of a workman in his place of work. Thus, an employer has a duty to provide a safe method of work, by prescribing rules sufficient for its orderly and safe management.
5. Here, there are many unanswered questions of fact remaining regarding whether the employer had a policy addressing courier duties during inclement weather; if so, whether that policy was followed by the supervisors; and if not followed, whether the failure to follow the policy contributed to the employee's death. In light of these open questions of fact, the grant of summary judgment was inappropriate.

**Opinion by: Karen King Mitchell, Judge**

September 6, 2016

\* \* \* \* \*

THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.